

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

**RADNOR HOLDINGS
CORPORATION, et al.,**

Debtors.

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF RADNOR
HOLDINGS CORPORATION, et al.,**

Plaintiffs,

y.

**TENNENBAUM CAPITAL PARTNERS,
LLC, et al.,**

Defendants.

§ Chapter 11
§
§ Case No. 06-10894-(PJW)
§ Jointly Administered

Adv. Pro. 06-50909

**APPELLANT'S STATEMENT OF ISSUES ON APPEAL AND
DESIGNATION OF ITEMS TO BE INCLUDED IN THE
RECORD WITH RESPECT TO APPEAL OF JUDGMENT,
FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND
AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The appellant in the above-captioned adversary proceeding, the Official Committee of Unsecured Creditors of Radnor Holdings Corp., *et al.* (the “**Committee**”), by and through its undersigned counsel, hereby files this (i) statement of issues on appeal and (ii) designation of items to be included in the record pursuant to Federal Rule of Bankruptcy Procedure 8006 in connection with this appeal of the Judgment (D.I. 38), the Findings of Fact and Conclusions of Law (D.I. 37), and the Amended Findings of Fact and Conclusions of Law (D.I. 41) (collectively, the “**Judgment**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on November 16, 2006.

The parties to this appeal are the Committee, defendants Tennenbaum Capital Partners, LLC, Special Value Expansion Fund, LLC, Special Value Opportunities Fund, LLC, and Jose E. Feliciano (collectively, “**Tennenbaum**”), and nominal defendants Radnor Holdings Corporation and certain of its subsidiaries (collectively, “**Radnor**”).¹ On October 31, 2006, one day after being granted standing by the Bankruptcy Court, the Committee filed its Complaint in this adversary proceeding. The next day, on November 1, 2006, Radnor filed its Emergency Motion to Join Adversary Proceeding or, in the Alternative, to Intervene as of Right (the “**Motion to Intervene**”). The Bankruptcy Court granted the Motion to Intervene by oral ruling on November 2, 2006, granting Radnor leave to intervene in this adversary proceeding as a nominal defendant. Trial commenced on November 2, 2006, and concluded on November 14, 2006. On the morning of November 16, 2006, the Committee and Tennenbaum filed their respective Proposed Findings of Fact and Conclusions of Law, and their respective memoranda of law regarding each count of the Complaint. Tennenbaum also filed a Proposed Judgment in Favor of Defendants on All Counts. On the afternoon of November 16, 2006, the Court entered its Judgment, adopting Tennenbaum’s Proposed Findings of Fact and Conclusions of Law, and the Proposed Judgment in Favor of Defendants on All Counts. The Committee noticed the instant appeal on November 20, 2006.

¹ “Radnor” shall mean those entities that are debtors and debtors in possession in the underlying bankruptcy cases herein, specifically, Radnor Holdings Corporation; Benchmark Holdings, Inc.; Radnor Asset Management, Inc.; Radnor Chemical Corporation; Radnor Delaware II, Inc.; Radnor Investments II, Inc.; Radnor Investments III, Inc.; Radnor Investments Inc.; Radnor Investments, L.L.C.; Radnor Management Delaware, Inc.; Radnor Management, Inc.; StyroChem Delaware, Inc.; StyroChem Europe Delaware, Inc.; StyroChem GP, L.L.C.; StyroChem LP, L.L.C.; StyroChem U.S., Ltd.; WinCup Europe Delaware, Inc.; WinCup GP, L.L.C.; WinCup Holdings, Inc.; WinCup LP, L.L.C.; WinCup RE, L.L.C. ; and WinCup Texas, Ltd.

STATEMENT OF ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Count 1 of the Complaint, finding that the Tranche A and B loans at issue in Count 1 were debt, and that no portion of the Tranche A and B loans should be recharacterized as equity.

2. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Count 2 of the Complaint, finding that the Tranche C loan at issue in Count 2 was debt and should not be recharacterized as equity.

3. Whether the Bankruptcy Court erred in determining that Tennenbaum was not an insider of Radnor.

4. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Counts 3 and 4 of the Complaint, finding that Tennenbaum did not engage in any inequitable conduct resulting in injury to the Committee to support equitable subordination.

5. Whether the Bankruptcy Court erred in characterizing the Committee's claims for breach of fiduciary duty and aiding and abetting a breach of fiduciary duty, Counts 8 and 10 of the Complaint, as "deepening insolvency" claims.

6. Whether the Bankruptcy Court applied the wrong standard by applying the lesser duty of care standard in evaluating the Committee's claims for breach of the fiduciary duty of loyalty and aiding and abetting a breach of the fiduciary duty of loyalty.

7. Whether the Bankruptcy Court erred in finding that the Bidding Procedures Order entered by the Bankruptcy Court on September 22, 2006 is the law of the case.

8. Whether the Bankruptcy Court erred in entering judgment in favor of Jose Feliciano on Count 8 of the Complaint, finding that Mr. Feliciano did not breach his fiduciary duty of loyalty to Radnor.

9. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Count 10 of the Complaint, finding that Michael Kennedy did not breach his fiduciary duty of loyalty to Radnor and that Tennenbaum did not knowingly participate in any breach.

10. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Count 13 of the Complaint, allowing Tennenbaum's proof of claim in its entirety.

11. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Count 14 of the Complaint, finding that none of Tennenbaum's liens should be avoided.

12. Whether the Bankruptcy Court erred in entering judgment in favor of Tennenbaum on Count 15 of the Complaint, finding that the \$3.2 million interest payment to Tennenbaum on April 4, 2006 was not a preference.

13. Whether the Bankruptcy Court erred in determining that the Committee acquiesced to the Tranche C loan.

14. Whether the Bankruptcy Court erred in finding that the equitable defense of acquiescence applies to the Committee's claims.

15. Whether the Bankruptcy Court erred as a matter of public policy in finding that the prepetition actions of certain unsecured creditors will bar an unsecured creditors' committee

from pursuing claim belonging to all unsecured creditors under the equitable defense of acquiescence.

16. Whether the Bankruptcy Court erred in allowing Tennenbaum to assert affirmative defenses for the first time in its post-trial submissions, in the absence of any pleading by Tennenbaum raising the affirmative defenses.

17. Whether the Bankruptcy Court allocated the burden of proof improperly on Tennenbaum's affirmative defenses.

18. Whether the Bankruptcy Court erred in finding that the Committee failed to prove a recognizable measure and amount of damages, by treating the expert report and testimony of Stephen B. Darr as a "deepening insolvency" methodology.

19. Whether the Bankruptcy Court erred in authorizing Tennenbaum to credit bid the full amount of its claim.

20. Whether the Bankruptcy Court erred in excluding the expert report and testimony of Professor Edward Rock.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

The Committee designates the items set forth below to be included in the record on appeal:

Appeal Record No.	Docket No.	Date	Document
1	24B ²	8/21/06	Motion to Approve (I) and Order (A) Establishing Bidding Procedures Relating to the Sale of the Debtors' Assets, (B) Scheduling a Hearing to Consider the Proposed Sale and Approving the Form and Manner of Notice Thereof, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including

² References to docket entries in the underlying bankruptcy proceeding are marked with a "B" in addition to the docket number. References to docket entries in this adversary proceeding are listed by docket number only.

			Notice of Proposed Cure Amounts, (D) Approving Bid Protections, (E) Granting Certain Related Relief and; (II) an Order (A) Approving the Proposed Sale, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Certain Related Relief
2	144B	9/11/06	Objection to Debtors' Motion For (I) An Order (A) Establishing Bidding Procedures Relating To The Sale Of The Debtors' Assets, (B) Scheduling A Hearing To Consider The Proposed Sale And Approving The Form And Manner Of Notice Thereof, (C) Establishing Procedures Relating To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts, (D) Approving Bid Protections, And (E) Granting Certain Related Relief; And (Ii) An Order (A) Approving The Proposed Sale, (B) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, And (C) Granting Certain Related Relief
3	179B	9/14/06	Reply to Creditors Committee Objection to Bidding Procedures Motion
4	184B	9/14/06	Debtors' Reply To The Objections Of The Official Committee Of Unsecured Creditors To Debtors' Motions For Orders Approving (I) Proposed Debtor In Possession Financing (Docket No. 20) And (II) Proposed Bid Procedures Relating To The Sale Of Substantially All Of The Debtors' Assets
5	277B	9/22/06	Order Granting Motion To Approve (I) Establishing Bid Procedures Relating To The Sale Of Debtors' Assets, (II) Scheduling A Hearing To Consider The Proposed Sale And Approving The Form And Manner Of Notice Thereof, (III) Establishing Procedures Relating To The Assumption And Assignment of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts, (IV) Approving The Break-Up Fee And Expense Reimbursement Provision, And (V) Granting Related Relief
6	298B	9/28/06	Transcript of Hearing held on September 20, 2006
7	369B	10/11/06	Transcript of Hearing held on September 22, 2006
8	391B	10/13/06	Motion of Official Committee of Unsecured Creditors to Modify Bid Procedures Order
9	425B	10/18/06	Motion for Order Granting the Committee Standing to Prosecute Actions on Behalf of the Debtors' Estates Against Tennenbaum Capital Partners, LLC, Special

			Value Expansion Fund, LLC, Special Value Opportunities Fund, LLC and Jose E. Feliciano, and for Related Relief
10	426B	10/18/06	Objection of the Official Committee of Unsecured Creditors to Proposed Credit Bid
11	440B	10/23/06	Transcript of Hearing held on October 20, 2006
12	443B	10/23/06	Transcript of Hearing held on October 4, 2006
13	470B	10/24/06	Memorandum of Points and Authorities in Support of the (A) Motion for Order Granting the Committee Standing to Prosecute Actions on Behalf of the Debtors' Estates Against Tennenbaum Capital Partners, LLC, Special Value Expansion Fund, LLC, Special Value Opportunities Fund, LLC and Jose E. Feliciano, and for Related Relief, (B) Complaint against Tennenbaum Capital Partners, LLC; Special Value Expansion Fund, LLC; Special Value Opportunities Fund, LLC; and Jose E. Feliciano; and (C) Objection of the Committee to Proposed Credit Bid
14	474B	10/25/06	Reply to Objection to Proposed Credit Bid Filed by Official Committee of Unsecured Creditors
15	475B	10/25/06	Limited Objection to Proposed Credit Bid of TR Acquisition Co., Inc.
16	476B	10/25/06	Objection to Claims of Tennenbaum Capital Partners, LLC, Special Value Expansion Fund, LLC and Special Value Opportunities Funds, LLC
17	477B	10/25/06	Response to Motion for Order Granting the Committee Standing to Prosecute Actions on Behalf of the Debtors' Estates Against Tennenbaum Capital Partners, LLC, Special Value Expansion Fund, LLC, Special Value Opportunities Fund, and Jose E. Feliciano; and for Related Relief
18	512B	10/30/06	Order Granting Official Committee of Unsecured Creditors Standing To Prosecute Actions On Behalf of the Debtors' Estates Against Tennenbaum Capital Partners, LLC, Special Value Expansion Fund, LLC, Special Value Opportunities Fund, LLC And Jose E. Feliciano and Related Relief
19	533B	10/31/06	Transcript of Hearing held on October 25, 2006
20	1	10/31/06	Complaint
21	9	11/1/06	Emergency Motion to Join Adversary Proceeding or, in the Alternative, to Intervene as of Right
22	582B	11/6/06	Transcript of Hearing held on October 27, 2006
23	18	11/9/06	Motion to Strike the Expert Report and to Preclude Related Testimony of Edward B. Rock
24	19	11/9/06	Response in Support of Tennenbaum Capital Partners's Motion to Strike the Expert Report and to

			Preclude Related Testimony of Edward B. Rock
25	20	11/10/06	Response to Defendants' Motion to Strike the Expert Report and Preclude Related Testimony of Edward B. Rock
26	25	11/13/06	Order Granting Motion in Limine To Strike The Expert Report And To Preclude Related Testimony of Edward B. Rock
27	620B	11/14/06	Transcript of Trial held on November 2, 2006
28	621B	11/14/06	Transcript of Trial held on November 3, 2006
29	27	11/15/06	Notice of Withdrawal of Certain Counts of the Complaint Pursuant to Fed.R.Bankr.P. 7015
30	29	11/16/06	Statement of Claims Supported by the Expert Testimony of Stephen B. Darr
31	30	11/16/06	Summary of Legal Standards and Factual Support for Each Claim of the Official Committee of Unsecured Creditors of Radnor Holdings Corporation
32	31	11/16/06	Committee's Proposed Findings of Fact and Conclusions of Law
33	32	11/16/06	Tennenbaum's Proposed Findings of Fact and Conclusions of Law
34	33	11/16/06	Response to Each Count of the Plaintiffs' Complaint
35	34	11/16/06	Proposed Judgment in Favor of Defendants on All Counts
36	35	11/16/06	Radnor's Proposed Findings of Fact and Conclusions of Law
37	37	11/16/06	Findings of Fact and Conclusions of Law
38	38	11/16/06	Judgment in Favor of Defendants On All Counts
39	41	11/16/06	Amended Findings of Fact and Conclusions of Law
40	42	11/20/06	Notice of Appeal of Judgment filed by The Official Committee of Unsecured Creditors
41	689B	11/21/06	Transcript of Trial held on November 6, 2006
42	690B	11/21/06	Transcript of Trial held on November 7, 2006
43	691B	11/21/06	Transcript of Trial held on November 8, 2006
44	692B	11/21/06	Transcript of Trial held on November 9, 2006
45	693B	11/21/06	Transcript of Trial held on November 13, 2006
46	694B	11/21/06	Transcript of Trial held on November 14, 2006
47			Trial Exhibits 1 through 350

RESERVATION OF RIGHTS

The Committee expressly reserves its rights in the United States District Court for the District of Delaware to object to or otherwise to move to strike or modify some or all of any

counter-designations of items to be included in the record on appeal or counter-statements of issues to be presented that might be submitted by Tennenbaum or Radnor.

Dated: Wilmington, Delaware
November 30, 2006

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